

### **REMARKS/ARGUMENTS**

Claims 1, 3-5, 7-12 and 14-20 are pending in the application and stand rejected.

#### **Rejection of Claims 1, 4, 5, 7-12, 14-16, and 18-20 under 35 U.S.C. §102(b) over Mileti**

Claims 1, 4, 5, 7-12, 14-16, and 18-20 continue to stand rejected under 35 U.S.C. §102(b) as being anticipated by the Mileti reference. The Examiner contends that Mileti discloses a roadway crash cushion having collapsible panels that are cambered by bending. Specifically, he contends that the cells 25, 26 within the panels 22 constitute a cambered portion that is formed by bending.

In response, Applicant submits that the Examiner's reading of the claim language is improper and only achieved by ignoring the specification. While the Examiner is correct that claims should be given their broadest reasonable interpretation, the Examiner's interpretation of the claims is not reasonable. The Examiner's own broad definition of the term "bending" does not even cover the Mileti device. The Examiner contends that "bending" should be broadly defined as "to cause tension in; to force into a curved or crooked form." However, there is nothing in Mileti that indicates that the cells 25, 26 have had tension caused in them, as the first part of the Examiner's definition would require. Additionally, nothing in Mileti indicates that the cells 25, 26 have been forced into a curved or crooked form, as the second part of the Examiner's definition requires. Additionally, the specification, as well as a clear reading of the claim language, make it apparent that it is the panel member itself that is bent and not cellular voids within the plastic making up the panel. The Examiner is ignoring the plain meaning of the claim language.

Applicant is further amending independent claims 1, 8 and 15 to merely clarify that the panels are substantially planar in form and that bending of the panel from its planar

form forms the cambered portion. This amendment is supported by the specification at least at paragraph [0031] and Figures 1-10.

Mileti's panels do not include at least this feature and, as Applicant pointed out previously, Mileti's panels are collapsed upon their planar axes, unlike those of the claimed cushion.

Applicant submits that the present amendment should be entered despite the issuance of a formal action because the amendment will either place the case in allowable condition or will place the claims in better form for appeal. Applicant submits that the amendment will only require a cursory review by the Examiner and merely clarifies the distinction being made previously.

**Rejection of Claims 3 and 17 under 35 U.S.C. §103(a) over Mileti and McFadden**

Claims 3 and 17 stands rejected for obviousness over a combination of the Mileti and McFadden patents. Applicant traverses the rejection as it might apply to the claims as amended herein. Applicant incorporates herein its arguments made above with respect to Mileti and submits that claims 3 and 17 should be allowable at least as depending from allowable base claims.

The Commissioner is hereby authorized to charge any fees deemed necessary for this response to **D posit Account No. 13-0010 (TAM-1005-US)**, maintained by Madan, Mossman & Sriram. The Examiner is invited to discuss this matter with Applicant's attorneys should any questions arise.

Respectfully submitted,

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